

APPEAL NO. 010400

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on January 16, 2001, the hearing officer resolved the three disputed issues in the appellant's (claimant) favor in concluding that the date of the claimant's occupational disease injury is _____; that the claimant sustained a compensable injury in the form of an occupational disease, bilateral carpal tunnel syndrome; and that the claimant reported the injury to the employer on or before the 30th day following the injury. Notwithstanding that the claimant has prevailed on the disputed issues, she nonetheless appeals a finding that she reported the injury on April 5, 2000, asserting that the evidence establishes that she reported the injury on March 27 and 29, 2000, and she asks that the finding be revised. The file does not contain a response from the respondent (carrier).

DECISION

A timely appeal not having been filed with the Texas Workers' Compensation Commission (Commission) and the jurisdiction of the Appeals Panel not having been properly invoked, the decision and order of the hearing officer have become final.

Section 410.202(a) provides that "[t]o appeal the decision of a hearing officer, a party shall file a written request with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party." Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that a request for review shall be presumed to be timely filed if it is: (1) mailed on or before the 15th day after the date of receipt of the hearing officer's decision; and (2) received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be complied with for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994.

Records of the Commission reflect that the hearing officer's decision was mailed to the claimant on January 25, 2001, under a cover letter of the same date. Notwithstanding that the claimant states in her request for review that she received the hearing officer's decision and order on January 31, 2001, she is deemed to have received the decision on the fifth day after it was mailed by the Commission, January 30, 2001, unless the great weight of the evidence shows otherwise. Rule 102.5(d). The Commission's letter was addressed to the claimant at the address she wrote on her envelope mailing her appeal and, aside from simply writing that she received the decision on January 31, 2001, the file does not establish by the great weight of the evidence that she did not receive the decision by the fifth day after it was mailed. The claimant had 15 days from the date she is deemed to have received the decision, or until February 14, 2001, to mail her appeal and another five days, or until February 19, 2001, for the appeal to be received by the Commission. The envelope containing the appeal reflects that it was timely mailed on February 14, 2001, but was misaddressed to the Commission's former address and was not received by the

Commission until February 22, 2001, the 23rd day after the claimant is deemed to have received the decision. The Commission's cover letter of January 25, 2001, stated the Commission's current address. Accordingly, the appeal, not having been received by the 20th day, is untimely. We observe that it would have also been untimely even using the date the claimant stated that she received the decision.

The decision and order of the hearing officer have become final pursuant to Section 410.169.

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge